Supreme Court, U.S.
FILED
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No.

In the
Supreme Court of the United States
October Term 1998

UNITED NEBRASKA BANK, - Respondent
Columbus Nebraska a Corporation,
Et. al

VS.

Darlene Schutt, Et. al
Dennis Lee: Kucera - Petitioner

On Petition For Writ of Certiorari
to the
Nebraska Supreme Court

PETITION FOR WRIT OF CERTIORARI

Dennis Lee: Kucera, Pro se

Dennis Lee: Kucera
R.R. #1 Box 77
Bellwood, Nebraska 68624
402-538-4235

6188

Petitioner's Rights as an Assignee of the Orginial Land Patent Grant were violated by the Bulter County, Nebraska District Court, The Nebraska Court of Appeals, and The Nebraska Supreme Court, and Petitioner was denied Due Process of Law.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Nebraska Supreme Court err by upholding the decision of the Bulter County, Nebraska District Court and the Nebraska Court of Appeals, in ruling against the rights of Petitioner Dennis Lee: Kucera as an Assignee of the Original Land Patent Grant?

II. Did the Nebraska Supreme Court depart from the Nebraska Rules of Judicial Procedure, and the Constitution, by upholding the Decision of the Butler County, Nebraska District Court and the Nebraska Court of Appeals, which denied the Petitioner's right to Due Process of Law ?

III. Are the Judges of the Bulter County, Nebraska District Court, Nebraska Court of Appeals, and Nebraska Supreme Court required to follow their Oaths to uphold the Constitution?

IV. Does the Petitioner Dennis Lee: Kucera, as Assignee of the Orginial Land Patent Grant, hold Allodial or Allodium Rights to the land?

V. Is the Land, held by an Assignee of the Orginial Land Patent Grant, Judgment proof?

VI. Did the Nebraska Supreme Court err by upholding the decision of the Bulter County, Nebraska District Court, and Nebraska Court of Appeals, in acting in excess of Jurisdiction by deciding a Federal Question (Land Patent Issue)?

LIST OF PARTIES BELOW

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Thomas M. Maul
James E. Papik
Eugene Schumacher
Ruby A. Matthies
Raymond J Hebda
Dawn S. Kucera(McRobert)
Libbie Kucera
Estate of Darlene E. Schutt
Butler County Attorney
Robert L. Holman
Richard Schutt
Eileen R. Kucera
Denise L. Hebda
Douglas J. Kucera

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II. This Court should grant Certiorari to re-affirm that the Judges of the Nebraska Supreme Court, Nebraska Court of Appeals,

and Butler County, Nebraska District Court are required to follow the Nebraska Rules of Court, their Oaths of Office, and to uphold the Constitution.

III. This Court should grant Certiorari to correct the departure from the Rulings in the Summa Corporation vs. State of California and Ware vs. Hylton concerning the Rights of an Assignee of the Orginial Land Patent Grant.

IV. The Court should grant Certiorari to correct acts in excess of authority and jurisdiction by the Judges of the Bulter County, Nebraska District Court, the Nebraska Court of Appeals, and the Nebraska Supreme Court

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PETITION FOR WRIT OF CERTIORARI

TO THE NEBRASKA SUPREME COURT

Petitioner, Dennis Lee: Kucera, hereby petitions this Court for a Writ of Certiorari to review the decision of the Nebraska Supreme Court, upholding the decisions of the Butler County, Nebraska District Court and the Nebraska Court of Appeals,

OPINIONS BELOW

Pet Appellant for Further Review & Brf filed 10/07/98 has been reviewed by the court and the following order entered: Petition for further review overruled.

Misc. Submissions to Court-s/a filed 09/08/98 has been reviewed by the Court and the following order entered: Summarily affirmed pursuant to Rule 7A(1). Appellant fails to argue his assignments of error and the assigned errors are meritless and do not warrant oral arguments or a detailed opinion.

JURISDICTION

The jurisdiction of this Court to issue a Writ of Certiorari is invoked under 28 U.S.C. Section 1257 (a), and the Constitution of the United States of America Article III, section 2, Paragraph 2, which states: "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact,.....".

NEBRASKA REVISED STATUTES

Pursuant to the Uniform Judicial Notice of Foreign Law Act, Nebraska Revised Statutes 25-12,101, "Every court of this state shall

take judicial notice of the common law and statutes of every state, territory, and other jurisdiction of the United States".

UNITED STATES CODE

Petitioner is entitled to Relief from the decisions of the lower Courts, pursuant to TITLE 28 U S. C. 1343, for Knowledge of the Law, Negligence of the Law, and Failure to Stop and Correct the Wrongs.

Petitioner is entitled to Relief from the decisions of the lower Courts, pursuant to TITLE 28 U S. C. 1332, as the primary basis for appeal is based on Diversity of Citizenship, and Assignee Rights under Land Patent Law.

UNITED STATES CONSTITUTIONAL PROVISIONS

The Constitution, Article III, Section 1, states:

"the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.".

The Constitution, Article III, Section 2, states:

"the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution .....".

The Constitution, Article IV, Section 2, Paragraph 1, states:

"The citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The Constitution Article VI, Paragraph 2, states:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of and State to the Contrary

notwithstanding."

CASE LAW

"When there is absence of jurisdiction, all administrative and judicial proceedings are a nullity and confer no right, offer no protection, and afford no justification, and may be rejected upon collateral attack." Thompson v Timie, 2 Peters 157; 7 L.Ed. 381, Griffith v. Frazier, 8 Cranch 9, 3 L. Ed. 471.

MISCELLANEOUS PROVISIONS

Patent Law is Treaty Law, and cannot be superseded by any act of State government, or Statute Law. The only courts having jurisdiction to hear a challenge of Petitioner's Land Patent Rights, as one of the assigns, are the Federal Courts.

STATEMENT OF THE CASE

This statement, lengthy as it may ultimately be, will express but a mere fraction of a fifteen year long effort to hold on to our land, which represents four generations of hard work.

The Docket sheets relative to the following cases are lengthy, and so, in very brief and pertinent terms, I submit the following:

On June 13, 1983, Citizens Bank and Trust Co. filed a Petition for Judgment on certain promissory notes against Dennis L. Kucera in the District Court of Butler County, Nebraska, Case # 7671. After a 90 day Stay, Judgment was granted, on December 12, 1983.

A Praecipe for Execution was filed on February 29, 1984 subsequent to the Judgment granted by the court on December 12, 1983.

Numerous filings were made to delay or stop the sale of my interest in a certain land contract. Finally on September 17, 1984, I filed for bankruptcy, as the only viable option, Case # BK84-1811.

Bankruptcy proved to be extremely challenging as there were many obstacles to overcome. After five years of determination, I was successful in the Court approving a reorganization plan in 1989. The annual payments were a tremendous financial burden and I found myself in default in 1993 and was ultimately dismissed from Case BK86-522.

Citizens Bank and Trust Company, Columbus Nebraska, was purchased by United Nebraska Bank, who, through its attorneys filed a Motion to Substitute Party and asserting that United Nebraska Bank had Purchased certain obligations including the loan and interest of the Defendant, Dennis L. Kucera, filed in Butler County District Court, on September 17, 1993. On September 23, 1993, a District Judge issued an Order allowing United Nebraska Bank to be substituted for Citizens Bank and Trust Company.

A Praecipe for Execution against Dennis L. Kucera's machinery and real estate was filed on November 5, 1993.

Notice to the court was filed by Dennis L. Kucera on December 15, 1993, making issue that the court lacked jurisdiction. District Judge Inbody in his Journal Entry, dated December 16, 1993, stated the District Court of Butler County, Nebraska had jurisdiction in the case.

Writs of Execution against Dennis L. Kucera were filed on September 24, and November 8, 1993.

On June 20, 1994, United Nebraska Bank as plaintiff and judgment creditor bid the sum of $210,000.00 on Dennis L. Kucera's interest in certain real estate.

On June 22, 1994, Notice of Hearing on Motion for Confirmation of Sale set for July 19, 1994.

On July 13, 1994, Dennis L. Kucera filed Objection to Confirmation of Sale.

The Court ignored the fact that, Libbie Kucera, mother of Dennis L. Kucera had an undivided one-half interest in the property sold, vested in a Life Estate, granted under the Last Will and Testament of Leo Kucera, her husband deceased, which was executed on or about June 16, 1986.

On July 28, 1994, District Court Judge Inbody overruled Objections filed by Dennis L. and Libbie Kucera, and on June 20, 1994, confirmed the sale of Dennis L. Kucera's undivided one half interest in real estate of which Libbie Kucera had the other one-half interest vested in a Life estate. The Order was dated July 28, 1994. The Sheriffs Deed was Conveyed, on July 28, 1994.

On July 8, 1994, Dennis L. Kucera filed a Complaint and Request for Administrative Hearing, Sanctions, and Other Relief with the Nebraska Department of Banking and Finance. Waste of Time!

On July 15, 1994, October 10, 1994, and October 21, 1994, the United Nebraska Bank attempted through letters, to make me a loan, to purchase my property back. End of Case # 7671.

On October 18, 1994, Summons were served to all parties and a Petition in Partition was filed, in Case # 8729 in Bulter County, Nebraska District Court against Dennis L. Kucera's family members and others.

On October 31, 1994, United Nebraska Bank filed Motions to Obtain Service By Publication.

On November 1, 1994, Dennis L. Kucera filed Objection to Motion to Obtain Service by Publication.

On November 22, 1994, District Judge Inbody issued an Order for Service by Publication.

In September 1995. Judge Alan G. Gless issued a Judgment Confirming Shares and Appointing Referee, which states: "It is the further Order of this Court that James E. Papik be, and hereby is, appointed referee to make partition of said real estate into the requisite number of shares and report the same at the present term of court.", and this Order of the Court was totally disregarded by the referee, James E. Papik.

On November 1, 1995, Referee filed a Report where in his opinion, Partition of real estate could not be made.

Notice of Appeal was filed by Petitioner/Defendant on January 10, 1996.

Order confirming sale was issued February 26, 1996.

Supersedeas Bond was filed on March 26, 1996, and on June 4, 1996 an Assignment and Supplemental Supersedeas Bond was filed.

Petitioner/Appellant filed a Brief in the Court of Appeals of the State of Nebraska, on June 21, 1996, in Case No. A96-0316.

Petitioner/Appellant filed a Reply Brief in the Court of Appeals of the State of Nebraska on August 2, 1996.

The Appeals Court issued a Memorandum, Opinion, and Judgment on Appeal on June 16, 1997, in which the Court AFFIRMED.

Petitioner/Appellant filed a Petition for Further Review and a Memorandum brief in Support of Petition for Further Review, on September 25, 1997, in the Supreme Court of the state of Nebraska, and was overruled, on October 16, 1997.

On Nov. 3, 1997, Dennis Lee: Kucera filed a Motion for Stay of Mandate and Affidavit in Support of Motion in the Nebr. Supreme Court, the Motion was overruled on Nov. 10, 1997.

On Nov. 17, 1997, petition for Rehearing, Review, and Judicial Notice was filed with the Nebr. Supreme Court. Petition overruled for lack of jurisdiction on Nov. 21,1997.

On Nov. 12, 1997, petition executed for a Writ of Certiorari in the Supreme Court of the united States to the Supreme Court for the state of Nebraska. Copies of the petition were returned Dec. 17, 1997 for correction. Corrections were made and copies of the petition were refiled with the United States Supreme Court, and Writ was subsequently denied.

On Dec. 15, 1997, a Notice of Hearing for Jan. 12, 1998, was filed by Dist. Court Clerk Butler Co. Nebr. in accordance with the Mandate of the Court of Appeals dated Oct. 23, 1997. Hearing was for Distribution of Sales Proceeds, Application for Cost, Rents and Damages and Application for Writ of Assistance.

On Jan. 9, 1998, a Motion to Dismiss for violation of Land Patent Rights was filed in Butler County, Nebraska District Court.

On Jan 12, 1998, a Motion for Stay of Mandate was filed in Butler County, Nebraska District Court.

On Jan, 12, 1998 Motion for Stay of Mandate filed in the Supreme Court of the united States and a copy of same filed in Butler Co. Dist. Court.

On Jan. 12, 1998, Dennis Lee: Kucera made an appearance at the Hearing, and reserved all Rights, waived none. Reserved standing Objection to all testimony contrary to U. S. Constitution and Treaty Laws, explained how American land ceded to U.S. Government by Treaties, and was then conveyed to Railroad Companies and private citizens. I, my wife Eileen, and my parents

Leo and Libbie Kucera filed on Aug. 10, 1984, with the Butler Co. Nebr. clerk, certified copies of Original Land Patents No.1 and No.7, as recorded in the Original Plat Books for Butler County, Nebraska .

Title 43-USC-59, states that: "..... duly certified copies of Patents shall be evidence in all cases where the Original would otherwise be....".

The Bank in a title search prior to the 1994 Sheriff's sale and again prior to the Referee's sale in 1996 was aware of the fact that certified copies of the Original Land Patents No. 1 and No. 7 had been filed. The bank, intentionally, brought everything recorded to the surface. except the filings of copies of the Orginial Land Patent Grant.

Information recorded in the County Clerk's office shows a conveyance from the united States by Patent to the Union Pacific Railroad Co. and its assigns forever, As assigns of the Original Patents, my family and I hold Allodial or Allodium Title to our land, impervious to collateral attack, and which is far superior to a Sheriff's Deed or Referee's Deed.

Judge Gless was aware of the case of Ware vs. Hylton--- Treaty Law cannot be interfered with by the legislature, and Judges, in every state shall be bound, thereby.

Congressional Patent proceedings of 1851 and 1891 allowed a two year statute of limitation on challenges to the Land Patent. None were made. On March 3,1893, Banks were forever barred.

42 American Jurisprudence, Section 781 thru 873, shows that a Patent of Land is to be the title to land and anything else is fraud.

Transfer of a Patent is by release of Patent Interest Right and not by some form of usury instrument of trust or warranty.

Judge Gless heard all parties and reserved ruling. He said he would research everything I stated before the court and would structure his own ruling.

Judge Gless signed an Order of Distribution on March 13, 1998, which did not address the Land Patent issue, and ignored all of the evidence, and oral testimony presented to the Court by Petitioner.

Judge Gless signed an Order for Writ of Assistance on March 13, 1998.

Petitioner filed a Notice of Appeal with the Nebraska Court of Appeals on March 16, 1998.

The Nebraska Court of Appeals affirmed the Butler County, Nebraska District Court's Decision on September 25, 1998.

The Case was appealed to the Nebraska Supreme Court on October 7, 1998, and was overruled on October 28, 1998.

REASONS FOR GRANTING THE WRIT

I. This Court should grant Certiorari to re-affirm that the Land Patent Grant is the controling factor in all cases involving seizure of land.

II. This Court should grant Certiorari to re-affirm that the Judges of the Nebraska Supreme Court, Nebraska Court of Appeals, and Butler County, Nebraska District Court are required to follow the Nebraska Rules of Court, their Oaths of Office, and to uphold the Constitution.

Generally, as between a partition in kind or sale of land for division, partition in kind is favored since this does not disturb the

existing form of inheritance, or compel a person to sell his property, against his will. Townbridge V. Donner, 152 Neb. 206, 40 N.W.2d 655 (1950) , Phillips V. Phillips, 170 Neb. 733, 104 N.W. 2d 52 (1960).

Generally, a presumption prevails that partition in kind is feasible and should be made and the burden is on those who seek a sale of property in lieu of partition in kind to show the existence of statutory grounds for such sale, but the character and location of the property or amount of interest sought to be assigned or both may be such that it will be presumed that partition in kind cannot be made. Townbridge V. Donner, 152 Neb. 206, 40 N.W.2d 655 (1950), Phillips V. Phillips, 170 Neb. 733, 104 N.W. 2d 52 (1960).

When there is an outstanding estate for life vested in another to the whole of the premises for which partition is sought, a remainderman cannot maintain an action in partition over the objection of the holder of such life estate. Bodeman V. Cary, 152 Neb. 506, 41 N.W. 2d 797 (1950).

III. This Court should grant Certiorari to correct the departure from the Rulings in the Summa Corporation vs. State of California and Ware vs. Hylton concerning the Rights of an Assignee of the Original Land Patent Grant.

IV. The Court should grant Certiorari to correct acts in excess of authority and jurisdiction by the Judges of the Bulter County, Nebraska District Court, the Nebraska Court of Appeals, and the Nebraska Supreme Court

"When there is absence of jurisdiction, all administrative and judicial proceedings are a nullity and confer no right, offer no protection, and afford no justification, and may be rejected upon collateral attack." Thompson v Timie, 2 Peters 157; 7 L.Ed. 381, Griffith v. Frazier, 8 Cranch 9, 3 L. Ed. 471

CONCLUSION

The Nebraska Supreme Court has ignored the Fact that the Nebraska Court of Appeals overlooked the abuses of Discretion, and the usurping of Jurisdiction by the Butler County, Nebraska District Court in deciding a case which involved the Rights of an Assignee of the Original Land Patent Grant, over which the State Courts have no Jurisdiction.

This case from the very inception has been a comedy of errors, and defies definition for the stress of mind, body, and soul, the Petitioner and Petitioner's family has had to endure.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted this 4 day of December 1998

Dennis Lee: Kucera

Dennis Lee: Kucera

Unpublished

DISTRICT COURT FOR BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK COLUMBUS, NEBRASKA, A CORPORATION,

VS. No. 8729

DARLENE E. SCHUTT AND RICHARD SCHUTT, WIFE AND HUSBAND; RUBY A. MATTHIES; DENNIS L. KUCERA AND EILEEN R. KUCERA, HUSBAND AND WIFE; DAWN S. KUCERA; DENISE L. HEBDA AND RAYMOND J HEBDA, JR WIFE AND HUSBAND; DOUGLAS J. KUCERA, A MINOR; LIBBIE KUCERA; UNITED STATES OF AMERICA ACTION THROUGH THE AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE; BUTLER COUNTY, A POLITICAL SUBDIVISION; COMMON TITLE BOND AND TRUST, PLC.; AND ALL OTHER PERSONS HAVING OR CLAIMING ANY INTEREST IN SW1/4,7-T16N-R3E AND N1/2 NE1/4 13-T16N-R2E OF THE 6TH P.M., BUTLER COUNTY, NEBRASKA, REAL NAMES UNKNOWN,

ORDER CONFIRMING SALE

Decided: February, 26, 1996

On this 26th day of February, 1996 this case came on for hearing on the Report of sale made by James E. Papik, Referee in Partition, and the Court being fully advised in the premises and having considered this matter, finds that the sale had on February 14, 1996, was in all

respects made in compliance with the law and orders of this court, that the real estate was sold for its fair market value under the circumstances and conditions of the sale, that subsequent sales would not realize any greater amount, and that the sale should be approved and confirmed.

It is Therefore Ordered, Adjudged and Decreed by the Court that the sale of the real estate concerned in this action described as follows:

> the Southwest Quarter (SW1/4) of Section Seven (7), Township Sixteen (16) North, Range Three (3), East of the 6th P.M. in Butler County, Nebraska, and the North Half of the Northeast Quarter (N1/2 NE1/4) of Section Thirteen (13), Township Sixteen (16) North, Range Two (2), East of the 6th P.M. in Butler County, Nebraska, except the North Eight (8) Feet thereof

is hereby approved and confirmed, that the Referee in Partition is ordered to execute, acknowledge and deliver to the purchaser proper conveyance of the real estate upon receipt of the purchase price, and that the matter of distribution of proceeds in this action be reserved for further order of this Court.

BY THE COURT:

/S/ ALAN G. GLESS
District Judge

Unpublished

NEBRASKA COURT OF APPEALS

United Nebraska Bank, Appellee,

vs.

Darlene Schutt et al., Appellants

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
of Irwin, Sievers, and Mues, Judges.
MUES, Judge.

INTRODUCTION

United Nebraska Bank (Bank) brought this action to partition real estate located in Butler County, Nebraska. The defendants Darlene Schutt, Ruby Matthies, Eileen Kucera, Dawn Kucera, Denise Hebda, and Douglas Kucera own an undivided interest as tenants in common in a portion of the real estate, subject to the life estate of defendant Libbie Kucera. The defendants will hereinafter be referred to collectively as Schutt. Butler County is named as a defendant in this action, as being owed property taxes on the subject property, but the county did not file a brief on appeal. The district court for Butler County ordered that the subject property be partitioned by sale. From the order for confirmation of sale, Schutt appeals.

STATEMENT OF CASE

On February 29, 1988, L.W. Nozicka conveyed an undivided one-half interest in the following farm real estate to Leo Kucera and Dennis Kucera as tenants in common:

> Tract 1, Southwest Quarter (SW1/2) of Section 7, Township 16, North, Range 3, East of the 6th P.M., Butler County, Nebraska, AND Tract 2, North Half of the Northeast Quarter

(N1/2 NE1/4) of Section 13, Township 16, North, Range 2, East of the 6th P.M. Butler County, Nebraska, except the north 8 feet thereof.

On August 26, 1991, Leo Kucera's personal representative conveyed Leo Kucera's interest in the above-stated property to the following as tenants in common, subject to the life estate of Libbie Kucera: Darlene E. Schutt, an undivided 1/3; Ruby A. Matthies, an undivided 1/3; Dennis L. Kucera, an undivided 1/24; Eileen R. Kucera, an undivided 1/24; Dawn S. Kucera, an undivided 1/12; Denise L. Kucera, an undivided 1/12; and Douglas J. Kucera, an undivided 1/12.

By sheriff's deed dated July 28, 1994, and corrective sheriff's deed dated February 3, 1995, the sheriff of Butler County conveyed Dennis Kucera's undivided one-half interest and 1/24 interest in said property to the Bank. On, October 28, 1994, the Bank filed a petition in partition asking that title to the real estate be quieted and confirmed, that the property be apportioned among the owners according to their respective rights, and if it could not be partitioned without prejudice to the rights of the owners, that it be sold and the proceeds divided accordingly. By answer, Schutt alleged, in part, that "all of said property is subject to a life Estate [sic], vested in Defendant Libbie Kucera, wife of Leo Kucera, deceased, and that the relief prayed for by the Plaintiff [Bank] is not available during the terminal life estate."

On February 27, 1995, the Bank filed an amended petition in partition seeking the same relief set forth above. No answer was filed. On September 27, 1995, a "stipulation for judgment confirming shares and appointing referee" was filed with the court in which the parties requested that the court approve and adopt said stipulation as its "judgment confirming shares and appointing referee." The stipulation set forth the respective interests of the parties in the real estate. Relevant portions of this stipulation will be set forth in more detail below.

The record reflects that a hearing was held on September 27, 1995. An entry dated September 27, 1995, appears in the trial docket and reflects the appointing of a referee and states in relevant part, "[s]tipulation accepted and judgment signed." That judgment does not appear in our record.

The report of the referee was filed on November 2, 1995, in which he opined that physical division of the subject property would be impractical and detrimental to its value. The report of the referee further recommended that the subject property be sold. The matter came on for hearing on December 12, 1995. The only witness at this hearing was the referee. The referee's report and a hand-drawn, rough sketch of the subject property was admitted into evidence. This evidence will be set forth in more detail below.

By order dated January 10, 1996, the trial court found that actual partition of the premises could not be made without great prejudice to the owners thereof and approved the referee's report. The order further ordered the referee to sell the subject property at public sale.

On February 14, 1996, both tracts of land were sold at public auction to Leo Osantowski, Frances Osantowski, and Ernest Osantowski for $182,000.

Following the referee's report of sale and motion to confirm sale, the court entered an order confirming the sale on February 26, 1996, and Schutt timely appeals.

ASSIGNMENTS OF ERROR

Schutt alleges that the trial court erred in (1) allowing partition of the parties' real estate by sale rather than in kind and (2) allowing a partition sale of real estate that was subject to a life estate.

STANDARD OF REVIEW

It is the statutory duty of the referee in the first instance to report to

the court whether or not it appears that partition in kind can be made without great prejudice to the owners, but when such report is filed it becomes the duty of the trial court to hear and judicially determine that issue. Trowbridge v. Donner, 152 Neb. 206, 40 N.W.2d 655 (1950) Generally, an adjudication by the trial court that the conditions are such as to require a sale should not be treated lightly, yet if it appears that the property has been decreed to be sold without sufficient cause, it is the duty of this court upon appeal therefrom to reverse such judgment. Id.

In equity cases, this court must retry the issue or issues of fact involved in the finding or findings of fact complained of upon the evidence preserved in the bill of exceptions and, upon trial de novo of such question or questions of fact, reach an independent conclusion as to what finding or findings are required under the pleadings and all the evidence, without reference to the conclusion reached in the district court or the fact that there may be some evidence in support thereof. Id.

DISCUSSION

We first address Schutt's second assigned error that the trial court erred in allowing a partition sale of real estate subject to a life estate. Neb. Rev. Stat. 25-2170 (Reissue 1995) provides in relevant part, "All tenants in common, joint tenants, or lessees of any estate in land or interest therein . . . may be compelled to make or suffer partition of such estate or estates in the manner hereinafter prescribed." Further, any joint owner of any real estate may compel partition thereof. Neb. Rev. Stat. 25-2170.01 (Reissue 1995).

As previously set forth, the Bank, by sheriff's deed, acquired Dennis Kucera's undivided one-half and 1/24 interests in the above-described property. Dennis' 1/24 interest in an undivided one-half was subject to Libbie Kucera's life estate. The undivided one-half interest was not. Thus, the Bank's interest in the subject property is as tenant in common on an undivided one-half, and as remainderman on 1/24 of the other undivided one-half, which is subject to Libbie

Kucera's life estate. Schutt relies upon the rule that a remainderman cannot maintain an action in partition over the objection of the holder of a life estate. See, e.g., Fisher v. Peden, 179 Neb. 150, 137 N.W.2d 349 (1965); Bartels v. Seefus, 132 Neb. 841, 273 N.W. 485 (1937) Weddingfeld v. Weddingfeld, 109 Neb. 729, 192 N.W. 227 (1923). Whether the Bank, as a tenant in common, may compel partition, or whether it is prevented from doing so by virtue of its status as a remainderman in 1/24 of the one-half interest, we need not decide because, as Schutt acknowledges, the rule that a remainderman may not bring a partition action against the holder of a life estate applies only when the holder of the life estate objects. See, Hartman v. Drake, 166 Neb. 87, 87 N.W.2d 895 (1958); Baskins v. Krepcik, 153 Neb. 36, 43 N.W.2d 624 (1950). The Bank argues that by virtue of the stipulation, Libbie Kucera, the life tenant, not only failed to object to the partition but even agreed to it. We agree.

The September 27, 1995, "stipulation for judgment [sic] confirming shares and appointing referee," which the parties requested that the court approve and adopt established the parties' respective interests in the subject property. It also stated:

That this court should make and enter a JUDGMENT [sic] CONFIRMING SHARES AND APPOINTING REFEREE according to the terms of this Stipulation and appoint in said Judgment [sic] a referee or referees, not exceeding 3 in number, to make partition into the requisite number of shares stipulated to herein.

While we agree with Schutt that the stipulation cannot be reasonably construed as an agreement to accomplish the partition by sale, as opposed to an in kind distribution, it clearly agreed that a partition should occur. This conclusion is inescapable when one views the stipulation against the backdrop of the procedure for partitions set forth in Neb. Rev. Stat. 25-2170 et seq, (Reissue 1995).
and Section. 25-2179 provides, "After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and

interests, and directing partition to be made accordingly." Section 25-2180 goes on to provide: "Upon entering such judgment the court shall appoint a referee or referees, not exceeding three in number, to make partition into the requisite number of shares."

The parties' stipulation, in many respects, tracks the language of 25-2179 and 25-2180. It stipulates that judgment be entered "confirming shares and appointing referee ..... to make partition into the requisite number of shares . . ." While the stipulation does not specifically state that the court is to enter a judgment "directing partition," as provided in . 25-2179, a judgment directing partition is a statutory prerequisite to the appointment of a referee "to make partition." By agreeing to the appointment of a referee, Schutt agreed to a partition of this real estate. This assignment of error is without merit. The method of partition is a separate determination from the decision to order partition. See, generally, 25-2181 to 25- 2183. We next discuss the method of partition ordered by the district court. Sale v. In Kind.

The remaining issue is whether the trial court erred in ordering partition by sale rather than partition in kind. As Schutt points out, there is generally a presumption in favor of the latter. See Nordhausen v. Christner, 215 Neb. 367, 338 N.W.2d 754 (1983). Partition in kind is generally favored because it neither disturbs the existing form of inheritance nor compels a person to sell property against his or her will. Phillips v. Phillips, 170 Neb. 733, 104 N.W.2d 52 (1960). As explained by the Supreme Court in Trowbridge v. Donner, 152 Neb. 206, 213-14, 40 N.W.2d 655, 660 (1950) :

[I]t is generally held that until the contrary is made to appear, the presumption prevails that partition in kind is feasible and should be made, and that the burden is on those who seek a sale of the property in lieu of partition in kind, to show the existence of a statutory ground for such sale. On the other hand, however, the character and location of the property, or the amount of the interest sought to be assigned, or both, may be such that it will be presumed that partition

in kind cannot be made.

It is pertinent, also, that a sale in partition cannot be decreed merely to advance the interests of one of the owners, but that before ordering a sale the court must judicially ascertain that the interests of all will be promoted, thereby bearing in mind that the "generally accepted test of whether a partition in kind would result in great prejudice to the owners is whether the value of the share of each in case of a partition would be materially less than his share of the money equivalent that could probably be obtained for the whole."

Partitions by sale are most commonly ordered when that method will operate more equitably, that is, where a partition in kind would cause a substantial injury to the cotenants. See, e.g., Nordhausen, supra, (citing Hipshire v. Stapleton, 57 Tenn. App. 339, 418 S.W.2d 457 (1966), in which court ordered partition by sale where dividing land would have resulted in each party receiving different type of land).

In Nordhausen, the trial court ordered partition in kind and gave one Party all of the pasture ground and another all of the crop ground, resulting in metes and bounds property descriptions which were not equal in kind. The trial court in Nordhausen similarly gave all of the improvements to one party. Noting that access to one party's property would be at best difficult, the Supreme Court reversed and remanded the cause with directions that the property be partitioned by sale. Id.

In this case, only the referee testified at the hearing on this issue. The referee's report recommending sale along with a rough sketch of the property were offered as exhibits. Although the referee's report describes the subject property as farm real estate, no other information is provided with regard to the character of the land, its physical description, its previous use, or the type of buildings or improvements thereon. The referee's report included his opinion that physical division of the real estate into several shares and interests in which it is owned would not be possible and would be impractical and detrimental to the value of these tracts of real estate, and that

actual partition and division of the real estate among its several owners cannot be made without great prejudice to the owners, or some of them.

According to the referee's testimony, he reached this conclusion after personally inspecting the property, reviewing copies of two appraisals, reviewing records from the Butler County Assessor's office, reviewing records from the Butler County ASCS office, and taking photographs of the subject property. The referee also testified more specifically, "I believe it would be very difficult to divide the property into 1/24ths, for instance, as two of the parties have a share in a half interest of the land, without prejudice to the value of the whole, and the interests of the individual property owners." When asked by Schutt's counsel if he had considered simply dividing the property so that the Bank received 1/2 and Schutt received 1/2, the referee responded that he had considered such, written to Schutt's attorney asking whether his clients would be agreeable, and did not hear a response. He therefore assumed that such an arrangement was not agreeable.

Similarly, the referee testified that he had written the attorneys asking if they had reached an agreement regarding division to which he received no response.

At the conclusion of the evidence, Schutt's counsel argued that "Mr. Papik [referee] should be requested to review the matter on the basis that the family members do not want a partition, they are satisfied, and [to determine] if there is some way to partition this in-kind without the multiple divisions of the other half of the real estate." To put this argument in context, during cross-examination of the referee by Schutt's counsel, the following occurred:

Q: I guess my--thank you. My question then would be, if the family members would agree to a division as I have proposed, that would require you to redo your report and submit a supplemental or an amended report to the court?

A: Possibly.

Q: And that possibility would be as to whether you would have to make another division as to whether or not the land could be partitioned in-kind after--

A: Well, the big consideration would be whether or not it would be agreeable to the other owner of the undivided half-interest.

Q: The 2/24th that is still owned by the bank?

A: No, I'm talking about the other half-interest that the plaintiff [Bank] has in this case.

Q: Mr. Papik, I don't mean to be repetitious but just to refine my question. If there was an agreement between the family members that was presented to you that said they did not want their interests partitioned in-kind, but were satisfied that half that is owned by the family remains an undivided one-half, would that require you to rethink your position and potentially submit an amended report to the court?

THE COURT: Didn't he answer the question before when he --

A: it's possible,

THE COURT: --when he said if all of the parties agreed. I took that to mean that if the bank and all the other parties agreed.

MR. OGLESBY; No further questions.

The parties then argued their respective positions. The Bank's counsel asked the court to accept the referee's report, and Schutt made the aforesaid argument.

The district court did not specifically rule on the request of Schutt's counsel that the referee be required to review the matter considering the "agreement of the Schutt family." The district court commented, inter alia, that "obviously the bank doesn't agree that it can be partitioned. They will not agree to a partition in kind, and they have a perfect right to have . . . a sale if it's impractical to do it

in-kind." The court then concluded that it did not seem possible to divide the subject property, some 220 acres, so as to provide equitable interests to all, and it ordered that the property be sold. Schutt contends that the district court erred in ordering a sale rather than an in kind distribution of the subject real estate. However, the in kind distribution which Schutt contends should have been made here is not an award of separate tracts to the Bank and to each of the Schutt family members in accordance with their stipulation for partition. Even Schutt does not suggest that cutting these parcels into small pieces, some as small as 1/24 and 1/12 of an undivided one-half interest, should have been ordered. Rather, Schutt argues that an in kind distribution should have been made awarding the Bank one-half of the real estate and the Schutt family, as a unit, the other half. Schutt contends that the referee's report assumed the necessity to divide the tract into sizes as small as 1/24 and 1/12 of an undivided one-half, but if consideration had been given to an award of only two parcels, as opposed to one to the bank and separate parcels to each of the Schutt family members, an in kind partition was appropriate.

Essentially, Schutt argues that the Bank failed to carry its burden to overcome the presumption favoring an in kind partition. However, several parties held interests as small as 1/24 and 1/12 of an undivided one-half interest in the subject property. As noted in Trowbridge v. Donner, 152 Neb. 206, 40 N.W.2d 655 (1950), the amount of the interest sought to be assigned in some cases may be such that it will be presumed that partition in kind cannot be made. Id. We believe this to be such a case. Although Schutt's counsel contended that Schutt (and her family) were "willing" to divide the property so that the Bank receives 1/2 and the defendants collectively receive the other 1/2, the referee was not timely advised of such willingness and no evidence of how to accomplish such a division was ever forthcoming. Moreover, a 50-50 in kind partition fails to take into account the Bank's 1/24 remainder interest in the undivided one-half interest subject to Libbie Kucera's life estate.

Schutt would have us reverse the district court's decision because it ordered a sale rather than an in kind partition dividing the tracts into

two parts, but even on appeal no concrete proposal to accomplish such in kind partition is presented. The evidence is such that we cannot make a rational decision on the propriety of such a proposal. These two tracts of real estate apparently comprise some 220 acres of farm ground. Even if the Bank were to receive real estate worth one-half of the total value plus 1/24 of , the value of the other one-half and the Schutts were to collectively receive the other 23/24 of one-half, each in a contiguous tract, a small portion of the Bank's share would be subject to Libbie's life estate, an interest which needed to be protected. There is no evidence that all of the acres are of equal value. We assume that more than one method of a two-parcel, in kind partition might be proposed, but any such proposal would require a survey and appraisal process, with attendant metes and bounds descriptions. We have none of this in our record, as no specific proposals were presented to the district court by either party or the referee.

The hearing on the referee's report was for the obvious purpose of the district court judicially determining whether or not partition in kind could be made without prejudice to the owners. see Trowbridge v. Donner, supra. Schutt was aware before the hearing of the referee's opinion in that regard, an opinion which was necessarily based on the parties' stipulation for judgment which identified separate interests of the several Schutt family members, plus the Bank and the life tenant. Absent the Schutt family's "willingness" to take their shares collectively, the only potential in kind partition available for the referee's consideration involved splitting the whole into several parts, some as small as 1/24 of one-half or 1/48 of the whole tract. As stated above, a presumption against partition in kind was created by such fractional ownership interests. Thus, if Schutt desired to overcome such presumption with a binding agreement and a specific proposal for a partition of the land into two parcels, with their interests awarded as a unit, it was incumbent upon them to present evidence accordingly.

In sum, our de novo review convinces us that the Schutt family failed to prove by a preponderance of the evidence that the partition

method it now proposes was feasible and, if so, that it could be accomplished without great prejudice to one or all of the parties. While the Bank's agreement to such method of partition was not a condition to ordering it, evidence of if and how such an in kind partition might be accomplished was necessary, and it was Schutt's burden to offer it.

Because we affirm the order of the trial court, we need not address the Bank's argument that Schutt accepted a benefit or received an advantage of the judgment by filing an assignment and supplemental supersedeas bond, assigning their interest to the Osantowski, thereby precluding them from bringing this appeal. See Kelly v. Kelly, 246 Neb. 55, 516 N.W.2d 612 (1994)

CONCLUSION

Because the holder of a Life estate failed to object, the partition of the subject property in this case was proper. Further, the trial court was correct in ordering the subject property to be partitioned by sale rather than in kind.

AFFIRMED .

Unpublished

DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, PLAINTIFF

VS. CASE NO. 8729-31-100

DARLENE E. SCHUTT, ET AL DEFENDANTS

NOTICE OF HEARING

BE ADVISED THAT APPLICATION FOR DISTRIBUTION OF SALE PROCEEDS, APPLICATION FOR COST, RENTS AND DAMAGES AND APPLICATION FOR WRIT OF ASSISTANCE is hereby scheduled for the 12th day of January, 1998, at 2:30 o'clock p.m., in the Butler County District Court, Courtroom Number One.

{ }This matter is scheduled to take fifteen minutes or less.

{x} This matter is scheduled to take 1 1/2 hours.

DATED this 15th day of December 1997.

/s/_____
District Court Clerk

Unpublished

DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, et al, Plaintiff,

vs.

Case No. 8729-31-100

DENNIS L. KUCERA, et al, Defendant

APPLICATION FOR DISTRIBUTION OF SALE PROCEEDS

COMES NOW the Plaintiff, by and through counsel, and hereby makes application to this Court for an Order authorizing and directing the Referee to distribute the proceeds from the sale of the property sold herein.

In support of said application, plaintiff respectfully submits that from the sale proceeds of $182,000.00, plus interest accrued thereon, the Referee shall pay the following: a. Referee fees, $3,640.00, b. Referee expenses $175.39, c. Plaintiff's attorney fees $ 14,500.00, The Referee and attorney fees set forth herein are reasonable and the awarding of plaintiff's attorney's fees as costs in this action is further warranted for the reason that the shares confirmed by the Judgment entered in this case on September 27, 1995 and the existence of all encumbrances of which Plaintiff had actual or constructive notice were accurately pleaded in the original petition, as provided for in Neb. Rev. Stat. 25-21,108.

The balance of said sale proceeds, plus interest accrued thereon, should be paid pursuant to the respective interests of the parties herein and further pursuant to the terms of the Judgment confirming shares and appointing a Referee filed in this matter, as follows:

a. Real estate taxes of Butler County in the sum of $12,324.58, plus interest accruing thereon at the rate of $2.75 per day from and after 9/27/95 until paid;

b. One-half of the balance to Plaintiff, United Nebraska Bank;

c. The other one-half of the balance as follows:

Darlene B. Schutt, an undivided one-third (1/3);
Ruby A. Matthies, an undivided one-third (1/3);
Dawn S. Kucera, an undivided one-twelfth (1/12);
Denise L. Hebda, an undivided one-twelfth (1/12);
Douglas J. Kucera, an undivided one-twelfth (1/12);
Eileen R. Kucera, an undivided one-twenty-fourth (1/24);
United Nebraska Bank, an undivided one-twenty-fourth (1/24);

which one-half shall be subject to the life interest of the Defendant, Libbie Kucera

WHEREFORE, plaintiff prays that the Court make and enter an Order of Distribution as set forth herein.

Unpublished

DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, ET. AL., Plaintiffs,

vs.

CASE NO. 8729-31-100

DENNIS L. KUCERA, ET. AL., Defendants.

APPLICATION FOR COST, RENTS AND DAMAGES

COMES NOW Ernest J. Osantowski, Francis E. Osantowski and Leo J. Osantowski, hereinafter referred to as "Purchasers" of the real estate sold by the Referee herein and show to the Court as follows:

1. Purchasers purchased the real estate which was the subject of the above-entitled partition action on February 14, 1996.

2. That said sale was confirmed by this Court on February 26, 1996.

3. That on February 29, 1996, the Purchasers paid into the Clerk of the District Court of Butler County, Nebraska the sum of $182,000 which represented the total sale price for said land purchased.

4. That thereafter Plaintiffs appealed said case and also posted a Supersedeas Bond with the Butler County District Court.

5. That thereafter the Defendants filed an Assignment and Supplemental Supersedeas Bond assigning to the Purchasers their interest in the sale proceeds being held by the Butler County District Court to the extent of $50,000. Said funds were assigned to Purchasers to pay all costs, rents and damages to said real estate which accrued during the pendency of Defendants' appeal and until said Purchasers were legally placed in possession of said property.

6. That this Court's rulings have been affirmed on appeal on October 27, 1997. Judgment was entered in accord with the Mandate of the Court of Appeals.

7. Based upon the foregoing, the Purchasers hereby apply to the Court to determine and assess against said Defendants all such costs, rents and damages due and owing the Purchasers which have accrued during the pendency of Defendants' appeal. Said Purchasers further apply to the Court for an order paying said amount to them from the sale proceeds currently held by the Clerk of the District Court or Butler County pursuant to the Assignment and Supplemental Supersedeas Bond executed by the Defendants and filed herein on June 4, 1996 and on July 17, 1996.

WHEREFORE, the Purchasers pray for an order determining the amount of costs, rents and damages due to the Purchasers for the Defendants' occupancy of said property during the pendency of the appeal and for an order disbursing to said Purchasers the amount, so determined, due them by the Court, said funds to be paid from the proceeds being held by the District Court Clerk of Butler County, Nebraska all pursuant to the Assignment and Supplemental Supersedeas Bond.

/S/ _____
EUGENE SCHUMACHER,

Unpublished

DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, ET. AL., Plaintiffs,

vs. CASE NO. 8729-31-100

DENNIS L. KUCERA, ET. AL., Defendants.

APPLICATION FOR WRIT OF ASSISTANCE

COMES NOW Ernest J. Osantowski, Francis E. Osantowski and Leo J. Osantowski, applicants herein, and show to the Court that they purchased the real estate involved in the above-entitled partition action on February 14, 1996 and that said sale was duly confirmed by this Court on February 26, 1996. Applicants further show to the Court that payment was made in full by them on February 29, 1996 and a Referee's Deed was delivered to them on February 29, 1996. That said Referee's Deed was recorded with the Butler County Register of Deeds on February 29, 1996. That the Defendants appealed this case to the Court of Appeals which affirmed this Court. That on October 27, 1997, Judgment was entered in accord with the Mandate of the Court of Appeals. Applicants further show to the Court that regardless of the foregoing facts, the Defendants, or some of them, remain in possession of said real estate and refuse to vacate the same, although they have no interest, right or title therein.

WHEREFORE, the undersigned pray for a Writ of Assistance to place the purchasers in possession thereof, or that said Defendants be required to show cause within a short time from this date why they should not vacate said premises and why a Writ of Assistance should not be issued putting the undersigned purchasers in possession thereof.

/s/_____
EUGENE SCHUMACHER,

Unpublished

DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, ET. AL., Plaintiffs,

vs. CASE NO. 8729-31-100

DENNIS L. KUCERA, ET. AL., Defendants.

NOTICE OF ASSIGNMENT

COMES NOW Ernest J. Osantowski, Francis E. Osantowski and Leo J. Osantowski, hereinafter referred to as "Osantowski's and give notice to the Court and to the Clerk of the Court that the Defendants herein executed an Assignment and Supplemental Supersedes Bond, the same having been filed with this Court on June 4, 1996 and on July 17, 1996. That Defendants by virtue of said document assigned to the Osantowski's, as purchasers of the real estate purchased under this partition action, all their right, title and interest to the extent of $50,000 in and to said proceeds. That the Application for Distribution of Sale Proceeds filed herein by the Plaintiff requesting distribution of said sale proceeds, to the extent that it requests distribution to the Defendants pursuant to paragraph (c), is subject to the assignment executed on file with the Court. That simultaneously herewith the Osantowski's have filed an Application for Cost, Rents, and Damages seeking a determination by the Court of the amount due and owing to the Osantowski's from the Defendants.

/S/_____
EUGENE SCHUMACHER

Unpublished

Nebraska Supreme Court

UNITED NEBRASKA BANK, Columbus Nebraska,
a Corporation Appellee,

vs. Case No. A-96-0316

Darlene E.. Schutt, et al Defendants/Appellants

Motion for Stay of Mandate

In the Interest of Justice, Dennis Lee Kucera, one of the Appellants in the above captioned case, is requesting a Stay of Mandate, pursuant to Nebraska Court Rules and Procedure Book, Rules of Appellate Procedure Rule 41A.

Dated this day November 1997

/s/ _____
Dennis Lee. Kucera

Unpublished

Nebraska Supreme Court

UNITED NEBRASKA BANK, Columbus Nebraska,
a Corporation, Appellee,

vs. Case No. A-96-0316

Darlene E. Schutt, et al, Defendants/Appellants

Affidavit in Support of Motion for Stay of Mandate

In the Interest of Justice, Dennis Lee: Kucera, one of the Appellants in the above captioned case, is requesting a stay of Mandate, for the following reasons:

1. This Case was conducted in direct violation of Appellants' God Given, and Constitutional Rights.

2. Appellants' Rights to Due Process were denied by all concerned.

3. The Appellant's Mother's undivided half of the property, in a Life Estate, was sold, without any regard as to her Property Rights.

4. Appellant is filing a Writ of Certiorari with the Supreme Court of the united States and in the Interest of Justice, the Stay of Mandate should be granted.

I, affirm under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

/s/_____
Dennis Lee. Kucera

Dated this 1 day of November 1997

NEBRASKA SUPREME COURT AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O. BOX 98910
2413 State Capitol Building
Lincoln, Nebraska 68509
(402) 471-3731

November 10, 1997

Dennis L. Kucera
R. R. 1, Box 77
Bellwood, NE 68624

IN CASE OF: A-96-0316, United Nebraska Bank v. Schutt

Applt. Mot to Stay Mandate filed 11/03/97

has been reviewed by the court and the following order entered:

Overruled.

Respectfully,

CLERK OF THE SUPREME COURT AND COURT OF APPEALS

NEBRASKA SUPREME COURT

UNITED NEBRASKA BANK,
Columbus Nebraska, a Corporation,
Appellee,

vs. Case No. A-96-0316

Darlene E. Schutt, at al.,
Defendants/Appellants

PETITION FOR REHEARING, REVIEW, and JUDICIAL NOTICE

COMES NOW one of the Appellants, Dennis Lee: Kucera, requesting the court for review of the supreme court ruling, of November 10,1997.

Dated this 14 day of November, 1997

/s/_____
Dennis Lee: Kucera Pro se

NEBRASKA SUPREME COURT

UNITED NEBRASKA BANK, Columbus Nebraska,
a Corporation, Appellee,

Case No. A-96-0316

Darlene E. Schutt, at al., Defendants/Appellants

AFFIDAVIT IN SUPPORT OF PETITION FOR REHEARING, REVIEW, and JUDICIAL NOTICE

COMES NOW one of the Appellants, Dennis Lee: Kucera, requesting the court for review of the supreme court ruling, of Appellant's entire defense of this case is November 10,1997. based on the Constitutional Rights, and Procedural violations of the court. This case should be reheard by the court as issues raised can and will set precedent.

Appellant, Dennis Lee: Kucera, is giving the Court Judicial Notice under the Neb. Rev. Stat. 25-12,101 which states: "Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.", and is petitioning the court to rehear the above captioned case for the following reasons:

1. Under Federal Rules of Civil and Judicial Procedure, F.R.A.P. Rule 41 (b), a Thirty (30) day Stay of Mandate may be

issued for good cause, pending the filing or a Petition for Writ of Certiorari to the Supreme Court of united States.

2. Named Case involves numerous Constitutional and Procedural Violations.

3. No person shall be deprived of Life, Liberty, or Property, without "Due Process of Law" Nebraska Constitution Article I, Section 3 (1875).

4. Judges and Attorneys involved in the Appellants' Case are in violation of the United States Constitution, Article 1 sec. 9 Paragraph 8.

5. Due to the fact, that Appellants are Private Citizens, and not 14th Amendment Citizens, case does involve issues that would set precedent, if the Appellate Courts would recognize their Constitutional Oath which is required of all Judges, and uphold the Constitution.

6. Dennis Lee: Kucera, as one of the Appellants requests the court to have the above captioned case reheard on the basis that the entire case was conducted in violation of their constitutional Rights. The entire case should be considered from a constitutional

standpoint, and not based on unconstitutional statutes.

In the Interest of Justice, are the Honorable Judges of the Supreme Court going to stop the atrocities that were committed against Appellants before, during and after trial, by reversing this case, or by Mandating it back down to be heard according to the Constitution, Federal Rules of Civil and Judicial Procedure, and Neb. Rev. Stat., or are they going to turn their backs and allow the Travesties of Justice to continue?

I, Dennis Lee: Kucera, affirm under penalty of perjury, that the forgoing statements are true and correct, to the best of My knowledge.

Dated This 14th day of November, 1997

/s/_____
Dennis Lee: Kucera, Pro se

NEBRASKA SUPREME COURT AND NEBRASKA COURT OF APPEALS OFFICE OF THE CLERK
P.O. BOX 98910
9113 State Capitol Building Lincoln, Nebraska 68509 (101) 171-3731

November 21, 1997

Dennis L. Kucera
R. R. 1, Box 77
Bellwood, NE 68624

IN CASE 0F A-96-0316, United Nebraska Bank v. Schutt

APPLT PETITION FOR REHEARING/REVIEW filed 11/17/97 has been reviewed by the court and the following order entered: Petition for rehearing overruled for lack of jurisdiction.

Respectfully,

CLERK OF THE SUPREME COURT AND COURT OF APPEALS

Unpublished

SUPREME COURT OF NEBRASKA

October 27, 1997

Butler County District Court,
Butler County Courthouse
451 5th Street
David City, NE 68632 1666

IN CASE OF: A-96-0316, United Nebraska Bank v. Schutt
DISTRICT COURT NO: 8729-31-100

RECEIVED OF THE CLERK OF THE SUPREME COURT, STATE OF NEBRASKA, THE FOLLOWING:

B/E Test Vol. 1 (25 pgs. test & exhs)
VOL 01 B/E Test (44 pgs. test & exhs.)

PLEASE SIGN AND RETURN.

/S/ Nancy Prochaska
Clerk of the Court

Unpublished

DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, Plaintiff

vs Case No. 8729-31-100

DARLENE SCHUTT, ET AL, Defendants

JOURNAL ENTRY

On the 27th day of October, 1997 judgment entered in accord with the Mandate of the Court of Appeals

/s/William H. Norton
District Judge

Unpublished

Date: October 23, 1997

NEBRASKA COURT OF APPEALS

To: Butler County District Court, Nebraska

WHEREAS, **in a late action in your court**,(emphasia added) captioned United Nebraska Bank v. Schutt you rendered judgment.

And WHEREAS, the defendant, Darlene E. Schutt prosecuted an appeal to this court.

ON CONSIDERATION WHEREOF, the judgment which you rendered has been affirmed by the Court of Appeals.

NOW, THEREFORE, you shall, without delay, proceed to enter judgment in conformity with the judgment and opinion of this court.

Costs of this appeal are to be paid by appellant and are taxed at $56.40.

WITNESS the Honorable Lindsay Miller-Lerman, Chief Judge, and the seal of this court

/s/ Lanet S. Asmussen
Clerk, Court of Appeals

IN THE DISTRICT COURT OF BUTLER COUNTY, NEBRASKA

UNITED NEBRASKA BANK, Columbus Nebraska, a Corporation, Plaintiff,

vs.

Darlene E. Schutt, et al, Defendants Case No. A-98-0248

NOTICE OF APPEAL

COMES NOW, Dennis Lee: Kucera, notifying the Court of the Appeal of the Decisions rendered on March 13, 1998 by Judge Gless, as Judge Gless did not follow proper procedure by ignoring the Motions presented to the court by one of the Defendants, Dennis Lee: Kucera, and by issuing a final order in the case, while it is under Appeal to the Supreme Court of the United States of America by way of a Writ of Certiorari. In addition, the issue of Land Patent Rights were raised, and at that point the Judge lacked jurisdiction to continue the case. Land patent Rights fall under Treaty Law, and only the Federal courts have jurisdiction over cases involving Land Patent Rights.

Dated this 16 day of March, 1998.

Dennis Lee: Kucera

NEBRASKA SUPREME COURT AND NEBRASKA COURT OF APPEALS
OFFICE OF THE CLERK
P.O, BOX 38910
2413 STATE CAPITOL BUILDING LINCOLN, NE 68509
(402) 471-3731

September 25, 1998

IN CASE OF: A-98-0248,
Nebraska Bank
vs
Schutt

Misc. Submissions to Court-s/a filed 09/08/48
has been reviewed by the court and the following order entered:

Summarily affirmed pursuant to Rule 7A(1). Appellant fails to argue his assignments of error and the assigned errors are meritless and do not warrant oral arguments or a detailed opinion.

Respectfully,

CLERK OF THE SUPREME COURT AND COURT OF APPEALS

THE NEBRASKA SUPREME COURT

UNITED NEBRASKA BANK, Columbus Nebraska,
a Corporation, Plaintiff/Appellee

vs Case No.. A-98-O248

Darlene E. Schutt, et at,
Defendants/Appellant

Petition for Further Review by the Supreme Court

1. The Defendants/Appellant bring this Petition pursuant to Rule 2 F of the Revised Rules of the Supreme Court/ Court of Appeals for Nebraska. This petition is timely filed within the 30 days after the release of the opinion of the Court of Appeals.

Jurisdiction

2. This Court has jurisdiction by virtue of Nebraska Revised Statutes, Chapter 25, Article 19, and by virtue of the provisions of the Nebraska Bill of Rights, Article I to the Nebraska Constitution at Section 24.

Parties

3. The Plaintiff- Appellee is a State Bank with a bank facility located in Nebraska.

4. The Defendants - Appellants are all family members.

Defendant! Appellant receives mail at R. R. 1, Box 77, Bellwood, Nebraska.

The Basis For The Petition

5. On September 8, 1998, the Court of Appeals filed a Misc. Submissions to Court, and summarily affirmed pursuant to Rule 7A(1) on September 25, 1998.

6. The detailed errors alleged to have been made are as follows:

A. There was an abuse of discretion at the Appeals court on September 25, 1998 when the Court refused to allow Oral argument in the case.

B. The Appellants had a meritorious defense when they moved to vacate the trial court's decisions; contrary to the Opinion of the Appeals Court.

C. The Appeals Court completely overlooked the Fact that the Issue of Rights as an Assignee of the Land Patent is outside the jurisdiction of a State Court.

D. The Appeals Court overlooked all the procedural errors of the lower court, and acted in an Administrative Capacity, contrary to Law.

All of the above issues in the Misc. Submissions to Court are contrary to Jurisprudence. This Petition seeks relief that the Supreme Court will review the entire record and reverse the erroneous rulings of both the Lower Court and the Court of Appeals.

/s/_____
Dennis Lee. Kucera
R. R. 1, Box 77
Bellwood, Nebraska.

THE NEBRASKA SUPREME COURT

UNITED NEBRASKA BANK, Columbus Nebraska
a Corporation, Plaintiff/Appellee

vs Case No.. A-98-O248

Darlene E. Schutt, et at,
Defendants/Appellants

Affidavit in Support of the Petition for Further Review by the Supreme Court

MEMORANDUM OF POINTS AND AUTHORITIES

Dennis Lee, Kucera is entitled to all Rights and Protections given to the Original Grantee, as one of the assigns of Land Patent, No. 1, and Land Patent, No. 7. (Refer to Summa Corporation vs. the State of California).

In Wilcox vs. Jackson it was stated that Patent alone passes paramount legal title to Grantee and his heirs, or assigns, forever.

In 1862, a Homestead Act stated, in Section 4, that " no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent, therefor.

Patent Law is Treaty Law, and cannot be superseded by any act of State government, or Statute law. The only courts having jurisdiction

to hear a challenge of Defendant's Land Patent Rights, as one of the assigns, are the Federal Courts.

It was, clearly, the intent of the early Lawmakers for the people of this country to be Freeholders of their land, and not ever be subject to have it taken from them by the government, banker, or any other party, who might have a claim against the person, who owned the land. In plain English, a Land Patent gave you an Allodial Freehold, that was "judgment proof, and yes even immune from seizure.

The original alleged contract was between Citizen Bank and Trust Company of Columbus, Nebraska, and Dennis L. Kucera, and alleged contract was void on its face as the alleged contract failed on consideration. Menominee River B. Co. V. Augustus Spies L & C Co.. 147 Wis. 559. 572. 132 NW 1118 .

Since the Bank had no Lawful Money Dollars as demanded by the Promissory Note, it must have tendered in something other than Lawful Money Dollars. That was not the Lawful Consideration necessary to create a Contract and, therefore, no Contract ever existed at Law. Menominee River B. Co. V. Augustus Spies L$ C Co, 147 Wis. 559. 572. 132 NW 1118 .

In order for the Bank to be a Holder in Due Course of the Promissory Note, they must give value, i e. loan money, under good faith. (See U.C.C. 3-30201 (2)). "A Bank is not the Holder in Due Course, by merely crediting the depositor's account". Bankers Trust V. Nagler 229 NYW 2nd 142.

The Chicago Reserve Bank's Publication, "Modern Money Mechanics'" on Page 6, states," "Of course, they do not really pay out loans from the money they received as deposits. If they did this, no additional money would be created. What they do, when they make a loan, is to accept a promissory note in exchange for credits to the borrower's transaction record." Perhaps the most important standing decision was rendered on Young v. Hembree. "A check is an order on a bank to pay (lawful) money." The Promissory Note was a demand for the bank to tender in dollars (money) and failing that mandate the contract failed and must be treated as never having existed.

When United Nebraska Bank doing business in Columbus Platte County, Nebraska purchased the assets and certain obligations of Citizen's Bank & 'Trust Company, including the loan and interest of

the Defendant, they purchased a fraudulent and void (Ab Initio) contract, which amounts to Fraudulent Deception on the part of Citizen's Bank & Trust Company.

ERROR NUMBER ONE

The Lower Court committed an Error of Law by issuing a Writ of Assistance with full knowledge that the Appellant was an Assignee of Land Patent Nos. 1 and 7.

ERROR NUMBER TWO

The Lower Court committed an Error of Law by issuing a Writ of Assistance with full knowledge that the state court had no jurisdiction or authority to Rule on the issue of Treaty Law.

ERROR NUMBER THREE

The Lower Court committed an Error of Law by issuing a Writ of Assistance with full knowledge that the entire case was under appeal, and the case was clouded by the Land Patent issue.

ERROR NUMBER FOUR

The Lower Court committed an Error of Law by issuing an Order for Distribution of Proceeds with full knowledge that the case was

under Appeal to the Supreme Court of the United States of America by way of a Writ of Certiorari.

ERROR NUMBER FIVE

The Lower Court committed an Error of Law by issuing a Writ of Assistance with full knowledge that the case was under Appeal to the Supreme Court of the United States of America by way of Writ of Certiorari.

ERROR NUMBER SIX

The Lower Court committed an Error of Law by not recognizing the Land Patent as filed in Butler County Clerks Office, and Defendant's Rights as one of the assigns.

THE OPINION OF THE APPEALS COURT.

The Opinion of the Appeals Court that "the assigned errors are meritless and do not warrant oral arguments or a detailed opinion.", does not conform to the rules of the Nebraska Supreme Court, the Nebraska Constitution, or Judicial Cannons. The Opinion of the Appeals Court does not take into consideration the Constitution, Treaty Law, or Patent Law, and does not do substantive Justice.

CONCLUSION

This entire case was predicated on Fraudulent documents, which were lawfully void Ab Initio, for lack of lawful consideration. The case was conducted in a manner repugnant to Justice, Patent Law, the Constitution, Treaty Law, and the Law of Nations. In the Interest of Justice, the Appellant should be given an opportunity for oral argument, or the Supreme Court should investigate the facts, reverse the entire case, and order a criminal investigation of not only the Banks involved, but the court system, also.

I, Dennis Lee. Kucera affirm that the forgoing is true and correct, with the help of GOD.

Executed October 6, 1998
Respectfully Presented

/s/ Dennis Lee: Kucera

NEBRASKA SUPREME COURT AND NEBRASKA COURT OF APPEALS OFFICE OF THE CLERK
P.O. BOX 98910
2413 STATE CAPITOL BUILDING LINCOLN, NE 68509
(402) 471-3731

October 28, 1998

IN CASE OF: A-98-0248, United Nebraska Bank v. Schutt

Pet Appellant for Further Review & Brf filed 10/07/98 has been reviewed by the court and the following order entered: Petition for further review overruled.
Respectfully,

CLERK OF THE SUPREME COURT AND COURT OF APPEALS